

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
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Attorney General's Office
P.O. Box 20207
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February 11, 2003

Hon. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Memorandum In Support Of Convening A Contested Case Proceeding
Docket No. 03-00060

Dear Chairman Kyle:

Enclosed is an original and fourteen copies of the Consumer Advocate and Protection Division's Memorandum In Support Of Convening A Contested Case Proceeding (Tariff No. 03-017). Copies furnished to counsel of record for interested parties.

Sincerely,

JOE SHIRLEY,
Assistant Attorney General

cc: Counsel of Record
52476

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: BELL SOUTH
TELECOMMUNICATIONS, INC.
TARIFF TO INTRODUCE
WELCOMING REWARD PROGRAM
(TARIFF NO. 03-017)**

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DOCKET NO. 03-00060

**MEMORANDUM IN SUPPORT OF CONVENING
A CONTESTED CASE PROCEEDING**

Comes now Paul G. Summers, the Attorney General and Reporter, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter "Attorney General"), and hereby files this *Memorandum in Support of Convening a Contested Case Proceeding* in the above-styled matter.

INTRODUCTION AND BACKGROUND

On January 7, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed a tariff seeking permission to offer a competitive response initiative entitled the "2003 Welcoming Reward Program" (the "Tariff"). The Tariff essentially provides a new BellSouth business customer with a \$100 per line/per location bonus for subscribing to BellSouth as the customer's local service provider for basic business service. To qualify for the bonus, the customer must meet the following terms and conditions: (1) the customer must be a "new BellSouth business customer"; (2) the customer's service must be located in BellSouth's Rate Group 5 service area; (3) the customer must have aggregate annual billing not exceeding \$36,000 at the time of enrollment; (4) the customer must sign a 12-month term service contract on or between the dates of February 3, 2003 and May 2, 2003; and (5) the customer must agree to pay termination liability charges should the customer terminate

the service contract prior to its expiration. *See* GSST § A13.90.27. The Tariff further provides that the program is available for resale for the duration of the enrollment period. *See Id.*

On January 22, 2003, AT&T of the South Central States, Inc., Cinergy Communications Co., Xspedius Corp., and Access Integrated Networks, Inc. (collectively the "CLEC Coalition") filed a joint *Petition to Suspend Tariff and Open a Contested Case Proceeding* ("CLEC Petition"). The CLEC Coalition challenged the legality and propriety of BellSouth's filing based on its allegations that the Tariff is unjust, unreasonable, discriminatory, and anti-competitive in violation of state law. *See* CLEC Petition at p. 6.

On January 31, 2003, the Attorney General filed its *Complaint and Petition to Intervene* ("Attorney General Petition"). The Attorney General alleged that the Tariff violates BellSouth's resale duties pursuant to the federal Telecommunications Act of 1996, and is unjustly discriminatory and anti-competitive in violation of state law. *See* Attorney General Petition at pp. 2-4. Both the CLEC Coalition and the Attorney General requested that the Tennessee Regulatory Authority ("TRA") convene a contested case proceeding to consider the issues raised. *See* CLEC Petition at p. 6; Attorney General Petition at p. 5.

On January 31, 2003, BellSouth filed *BellSouth Telecommunications, Inc.'s Response to Request to Suspend BellSouth Tariff* ("Response"). BellSouth maintained that its Tariff is pro-competitive, is not unjustly discriminatory, and does not violate its resale obligations. *See* Response at pp. 9-15. BellSouth further asserted that other tariffs similar to BellSouth's Tariff have been endorsed by the Federal Communications Commission ("FCC"). *See* Response at pp. 7-9. Accordingly, BellSouth argued that the TRA should not convene a contested case proceeding in this matter. *See* Response at p. 15.

At the Authority Conference held on February 3, 2003, the TRA heard oral arguments from BellSouth, the CLEC Coalition, and the Attorney General on the issue of whether BellSouth's Tariff should be suspended and a contested case proceeding convened. Thereafter, over the objection of the Attorney General, the TRA voted to allow BellSouth to place the Tariff into effect, provided that the Tariff be amended to permit customers to terminate service within the first three months without incurring any termination liability charges. The Petitions of the CLEC Coalition and the Attorney General were held in abeyance. Subsequently, on February 4, 2003, BellSouth filed a revision to the Tariff to conform the provisions contained therein to the TRA's February 3rd decision ("Revised Tariff").

**A CONTESTED CASE PROCEEDING SHOULD BE
CONVENED TO EVALUATE THE ISSUES RAISED WITH
RESPECT TO THE OPERATION OF BELL SOUTH'S TARIFF**

Certain issues and concerns arise when one attempts to reconcile the operation of BellSouth's Tariff and Revised Tariff to BellSouth's legal and regulatory duties pursuant to federal and state law.¹ The Attorney General's Petition and argument focused on three areas of concern — resale obligations, unjust discrimination, and anti-competitive behavior.

RESALE OBLIGATIONS

Incumbent local exchange carriers such as BellSouth have the following resale duties: (1) to resale retail telecommunications services at established wholesale rates; and (2) to avoid

¹ Because the revisions made in BellSouth's Revised Tariff do not address any of the issues and concerns raised by the Attorney General, we hereinafter refer to both the original Tariff and Revised Tariff as simply "the Tariff".

unreasonable or discriminatory resale practices.²

Pursuant to 47 U.S.C. § 252(d)(3), the TRA established a 16% wholesale discount rate that BellSouth must apply to its retail rates in the resale of telecommunications services to its competitors. *See Final Order*, TRA Docket No. 96-01331 (January 17, 1997). BellSouth maintains that it is not required to apply this wholesale discount rate to the retail services offered by the Tariff. *See Response* at pp. 13-14. To support its position, BellSouth relies upon an FCC rule that essentially provides that promotional offerings of less than 90 days do not have to be made available for resale at the wholesale discount rate. *See Id.* The specific rule is set out in 47 C.F.R. § 51.613(a)(2), which states:

Short term promotions. An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if: (i) Such promotions **involve rates that will be in effect for no more than 90 days**; and (ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example, by making available a sequential series of 90-day promotional rates. (*emphasis supplied*).

Moreover, the FCC has affirmed the application of this rule to the resale duties of RBOCs, such as BellSouth, that have attained authorization under Section 271 to provide inter-LATA services. *See Memorandum Opinion and Order*, FCC 99-404, ¶ 381 and accompanying footnote 1178 (December 22, 1999).

BellSouth acknowledges that the TRA requires that long-term promotions, defined as those in effect for more than 90 days, be made available for resale at the wholesale discount rate; and BellSouth has further noted its agreement with this decision. *See Response* at pp. 13-14. Thus,

² 47 U.S.C. § 251(c) provides in part: Additional obligations of incumbent local exchange carriers . . . (4) Resale. The duty (A) to offer resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service

BellSouth and the Attorney General appear to be in agreement that “short-term” promotional offerings of less than 90 days do not have to be made available for resale at the wholesale discount rate; and that “long-term” promotional offerings of greater than 90 days must be made available for resale at the wholesale discount rate.

The Attorney General submits that one key area of disagreement between BellSouth and the Attorney General concerns whether the Tariff is a short-term or long-term promotional offering. BellSouth avers that the Tariff is a short-term offering, and the Attorney General believes contra. The prime reason for the Attorney General’s assertion that the Tariff constitutes a long-term offering is that, notwithstanding the Tariff’s 90-day window for subscribing to the services offered therein, the customer must subscribe to one year of service under the terms of the Tariff. Of course, BellSouth is the master of its offer and, accordingly, may require a customer’s assent to such a long-term service commitment in order to secure the Tariff’s incentives.

Nevertheless, the Attorney General asserts that **a promotional arrangement that requires the customer to commit to a service term of greater than 90 days cannot be legitimately classified as a short-term promotional offering under the FCC’s rule.** This is so because the rates, terms, and conditions of service offered in such arrangements are in effect for longer than 90 days. The provision in the Tariff that requires the customer to pay termination liabilities, which are based upon the Tariff’s promotional rate, for termination of service after 90 days clearly supports the Attorney General’s assertion that the Tariff’s promotional rates are in effect for longer than 90 days. Accordingly, the Attorney General submits that the Tariff is a long-term offering that must be made available for resale at the wholesale discount rate established by the TRA.³

³ Even if no term provisions were created by the Tariff, BellSouth’s resale obligations would still apply.

Additionally, in Docket No. 99-00936, the TRA found that a "90-day promotion" which requires a customer to commit to a long-term service arrangement does not fit within the TRA's definition of a "special promotion." *See Order Denying Tariff*, Docket No. 99-00936 (November 7, 2000). The TRA's definition of a "special promotion" is essentially the same as the FCC's definition of a "short-term promotion" in that both may not run for a period exceeding 90 days. Therefore, the TRA has recognized that promotions that are structured like the one offered in BellSouth's Tariff are indeed long-term offerings within the meaning of the FCC's rule.

Thus, there arises the legitimate and meritorious issue of whether operation of the Tariff violates BellSouth's resale duties as established by the federal Telecommunications Act of 1996 and related rules and orders of the FCC and the TRA.

UNJUST DISCRIMINATION

As a regulated telecommunications carrier operating in Tennessee, BellSouth has the duty to avoid engaging in unjustly discriminatory or unduly preferential treatment directed toward its customers.⁴

⁴ T.C.A. § 65-4-122 provides in part: (a) If any common carrier or public service company, directly or indirectly, by any special rate, rebate, drawback, or other device, charges, demands, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects, or receives from any other person for service of a like kind under substantially like circumstances and conditions, and if such common carrier or such other public service company makes any preference between the parties aforementioned such common carrier or other public service company commits unjust discrimination, which is prohibited and declared unlawful. (b) Any such corporation which charges, collects, or receives more than a just and reasonable rate of toll or compensation for service in this state commits extortion, which is prohibited and declared unlawful. (c) It is unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage.

T.C.A. § 65-5-204(a) further provides: No public utility shall: (1) Make, impose, or exact any unreasonable, unjustly discriminatory or unduly preferential individual or joint rate, or special rate, toll, fare, charge, or schedule for any product, or service supplied or rendered by it within this state; (2) Adopt or impose any unjust or unreasonable classification in the making or as the basis of any rate, toll, charge, fare, or schedule for any product or service rendered by it within this state.

BellSouth's Tariff is offered only to "new BellSouth business customers". GSST § A13.90.27.A. Under the terms of the Tariff, a so-called new customer is one that signs "a 12-month contract between February 3, 2003, and May 2, 2003. Following this period, no subscribers may enroll in [the] Program" offered by the Tariff. GSST § A13.90.27.A.4. Thus, on its face and by its very nature, the Tariff discriminates between so-called new business customers and other business customers. These "other business customers" include BellSouth's existing customers taking basic business local service in Rate Group 5 as of February 2, 2003, and BellSouth's future customers who will subscribe to this service after May 2, 2003. In other words, the Tariff draws two, arbitrary lines in time, and customers who are otherwise the same, but for their failure to subscribe to service within the time period created by the Tariff, are treated differently in their purchase of an entire year's worth of service.

The Attorney General submits that the mere passage of time is not sufficient justification to treat similarly-situated customers differently. Only when the passage of time is accompanied by other factors, such as shifting costs of providing service or technological advances improving the nature and quality of service, can time justify disparate treatment that would otherwise violate the policy against unjust discrimination. In this case, a temporal difference of only a few hours in time results in discriminatory treatment — from the close of business one day until the opening of business the next. Thus, the Tariff plainly discriminates among BellSouth's business customers who subscribe to basic business local service in Rate Group 5, and the arbitrary timing in the selection of service created by the Tariff does not sufficiently explain this discrimination.

The Attorney General submits that when discrimination among customers who appear to be similarly situated is identified, there must be some further examination of the circumstances to

determine whether such discrimination is unjust, or whether there is a just and rational basis for such discrimination. BellSouth is of the position that the discrimination created by its Tariff is justified. BellSouth claims that the existence of competition is sufficient reason to treat its business customers differently. *See* Response at pp. 10-11. BellSouth further relies on the Competitive Necessity doctrine to explain and support its position. *See* Response at pp. 11-12.

The Attorney General alleges that the Tariff is unjustly discriminatory and, therefore, illegal. The Attorney General points out that the policy against unjust discrimination among telecommunications customers is still the law of the land, notwithstanding the development of competitive markets. In passing the 1995 Tennessee Telecommunications Act, the General Assembly did not repeal Tenn. Code Ann. §§ 65-4-122 or 65-5-204(a), which codify the state's unjust discrimination policy. Nor did the General Assembly exempt telecommunications carriers that participate in competitive markets from complying with these sections of Title 65. *See* Tenn. Code Ann. § 65-5-208(c). Therefore, Tenn. Code Ann. §§ 65-4-122 and 65-5-204(a) remain in the law today, and these laws coexist with the General Assembly's declaration that Tennessee's telecommunications markets must be opened to competition. *See* Tenn. Code Ann. § 65-4-123. Today's competitive marketplace notwithstanding, there can be no question about a telecommunications carrier's duty to comply with Tennessee's policy against unjust discrimination among utility customers.

Moreover, there is a federal policy against unjust discrimination among telecommunications customers, which was established by Congress.⁵ Just as the TRA is responsible for enforcing the

⁵ 47 U.S.C. § 202(a) provides: It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable

state's policy, the FCC is responsible for enforcing this federal policy. BellSouth avers that the FCC would view the Tariff favorably because, in part, the Tariff is consistent with 47 U.S.C. § 222(c)(1). *See* Response at p. 8. With respect, the Attorney General believes that the Tariff's consistency with 47 U.S.C. § 222(c)(1) is beside the point and irrelevant. Section 222 deals with the safeguarding of customer information, and the Attorney General has raised no issues connected to any of the requirements contained therein. Thus, whether the FCC would find BellSouth's Tariff consistent with Section 222(c)(1) is of no concern to the Attorney General in this instance.

Much more analogous and relevant to the Attorney General's concerns, however, is whether the FCC would consider the Tariff as being consistent with Section 202(a) regarding unjust discrimination, especially in light of today's competitive telecommunications marketplace. The FCC has spoken on this issue:

Sections 201 and 202, codifying the bedrock consumer protection obligations of a common carrier, have represented the core concepts of federal common carrier regulation dating back over a hundred years. Although these provisions were enacted in a context in which virtually all telecommunications services were provided by monopolists, **they have remained in the law over two decades during which numerous common carriers have provided service on a competitive basis . . .** [S]ections 201 and 202 lie at the heart of consumer protection under the Act. Congress recognized the core nature of sections 201 and 202 when it excluded them from the scope of the Commission's forbearance authority under section 332(c)(1)(A). Although section 10 now gives the Commission the authority to forbear from enforcing sections 201 and 202 if certain conditions are satisfied, **the history of the forbearance provisions confirms that this would be a particularly momentous step . . .** Consistent with the centrality of sections 201 and 202 to consumer protection, the Commission has never previously refrained from enforcing sections 201 and 202 against common carriers, **even when competition exists in a market . . . Based on the record before us, we decline to forbear from enforcing the core common carrier obligations of sections 201 and 202 at this time.**

preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-134, 13 FCC Rcd. 16,587, ¶¶15-18 (July 2, 1998) (*citations omitted*) (*emphasis supplied*).

Accordingly, the General Assembly, Congress, and the FCC all have made it clear that **the existence of competition alone cannot justify discriminatory treatment of customers who are similarly situated otherwise.**

BellSouth also relies on the FCC's use of the Competitive Necessity doctrine to justify the discrimination created by its Tariff. *See* Response at pp. 11-12. BellSouth suggests that the regulatory flexibility justified by this doctrine gives BellSouth ample room to engage in the type of discriminatory pricing that is effectuated by its Tariff. *See Id.* While the Attorney General agrees with BellSouth that the onset of competition is sufficient justification to give incumbent carriers more flexibility, neither competition nor the Competitive Necessity doctrine grants carriers absolute discretion to engage in discrimination that is otherwise unjust under the law. The FCC has spoken to this issue as well:

We reviewed prior Commission decisions in which we had considered application of the competitive necessity doctrine to justify a tariff that was otherwise unlawful under section 202(a), and found that we had never approved a customer-specific tariff, i.e., a tariff that is not generally available to similarly situated customers, under the competitive necessity doctrine.

Memorandum Opinion and Order on Reconsideration, FCC 98-38, 13 FCC Rcd. 6964, ¶5 (March 13, 1998) (FCC's refusal to use the Competitive Necessity doctrine to approve a tariff that was otherwise unlawful under Section 202(a)) (*citations omitted*) (*emphasis supplied*).

Accordingly, **the existence of the Competitive Necessity doctrine, in and of itself, does not rationalize discriminatory treatment that is otherwise unlawful.**

In summary, the Attorney General submits that BellSouth has not proffered a rational basis for the discriminatory treatment that the Tariff creates among its business customers. Moreover, the

Attorney General avers that, on its face, no sufficient justification exists. Accordingly, there arises the legitimate and meritorious issue of whether the Tariff is unjustly discriminatory under the law.

ANTI-COMPETITIVE BEHAVIOR

As a regulated telecommunications carrier operating in Tennessee, BellSouth has the duty to avoid engaging in unjust and anti-competitive practices directed toward its competitors.⁶

BellSouth's Tariff promotes several situations which raise anti-competitive concerns. For instance, there is the likelihood that the Tariff: (1) creates an impermissible price squeeze; (2) unreasonably locks customers into relatively long-term service commitments; (3) unreasonably restricts a competing carrier's ability to resell special rates; and (4) unreasonably inflates a competing carrier's customer acquisition costs.

Price Squeeze

Because 47 U.S.C. § 252(d)(3) requires wholesale rates to be based on the retail rates charged to subscribers, BellSouth's Tariff likely creates an impermissible price squeeze. A price squeeze can occur when a supplier sells a service to its retail competitors at a wholesale price that is inappropriately close to its own retail price. In other words, the profit margins of competitors are

⁶ T.C.A. § 65-5-208(c) provides in part: The authority shall, as appropriate, also adopt other rules or issue orders to prohibit cross-subsidization, preferences to competitive services or affiliated entities, predatory pricing, price squeezing, price discrimination, tying arrangements or other anti-competitive practices.

T.C.A. § 65-4-123 further provides: The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers. To that end, the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider; universal service shall be maintained; and rates charged to residential customers for essential telecommunications services shall remain affordable. T.C.A. § 65-4-115 further provides in part: No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory

improperly manipulated by the wholesale provider for the benefit of the wholesaler's retail unit or affiliate. In this case, BellSouth provides basic business local service to its retail end-user customers in Rate Group 5; and BellSouth is also the wholesale provider of this service to many of its competitors. BellSouth generally charges its retail end-user customers \$39.70 per line/per month for this service. *See* GSST § A3.2.1.A.1.(e). The TRA has established a wholesale price equal to a 16% discount off of BellSouth's retail rates. Thus, the wholesale price for basic business local service in BellSouth's Rate Group 5 is \$33.35 per line/per month ($\$39.70 \times (100\% - 16\%)$). Under the terms of the Tariff, BellSouth will charge its retail end-user customers \$376.40 per line for one year of service ($(\$39.70 \times 12) - \100.00). On the other hand, BellSouth will charge its competitors a wholesale discount price of \$400.20 per line for one year of the same service ($\$33.35 \times 12$).

In fact, BellSouth will charge more to its competitors for wholesale basic business local service than BellSouth will charge for the same service to its retail end-user customers under the Tariff. Therefore, the competing carriers' wholesale price is higher than the retail price of BellSouth, which is the chief competitor of these competing carriers. An elementary economic principle that is violated by the Tariff is that, in capitalist markets, a firm's wholesale price must be less than the retail price of its competitors if the firm is to survive as a going concern.

Thus, there legitimately arises the issue of whether the Tariff creates an impermissible price squeeze in violation of the law.

Long-term Service Commitments

BellSouth's Tariff "locks-in" so-called new business customers by requiring new and returning customers to sign a 12-month term service contract with termination liabilities for early

cancellation of the service arrangement. Incentives are given to capture the customer's business; however, the customer must also agree to a term commitment loaded with back-end termination liabilities. Accordingly, the Tariff is designed to bind the customer to BellSouth for a specific period of time. Because customers who enter into such arrangements may be effectively shielded from further competitive initiatives by competing carriers, questions arise as to whether this practice by a dominant provider such as BellSouth is appropriate in markets where competition is still developing.

Indeed, the TRA itself has denied a BellSouth promotion for this very reason. Docket No. 99-00936 concerned a BellSouth promotion that offered incentives on business services if customers would subscribe to service within a 90-day enrollment period. BellSouth's promotion also required customers to commit to a service term of at least one year, and to pay termination liability charges if the customer prematurely canceled the service arrangement. In denying the promotion, the TRA stated:

[The promotion] intends to lock customers into long-term contracts, and clearly does not meet the Authority's well-established definition of 'special promotion' . . . not only does [the promotion] not meet the traditional definition of 'special promotion,' but **because it was submitted under the guise of a 90-day 'special promotion,' the length of the resulting contract terms in the [promotion] are anticompetitive.** The Directors reached this conclusion because the long-term contracts that derive from this [promotion] effectively operate to prevent customers from choosing a competitor of BellSouth during the entire term of an agreement, not just during the 90-day period of the 'special promotion.'

Order Denying Tariff, TRA Docket No. 99-00936, p. 7 (November 7, 2000) (*emphasis supplied*).

The instant Tariff is structured essentially the same as the promotion that was denied by the TRA in Docket No. 99-00936. Thus, there legitimately arises the issue of whether such structural aspects of the instant Tariff are anti-competitive under the law.

Resale Restrictions

The Tariff discriminates against BellSouth's competitors because these carriers cannot effectively resell the Tariff to their targeted customer group due to BellSouth's narrow construction of customer eligibility requirements. Because BellSouth is the dominant provider of basic business local service, BellSouth's competitors naturally target existing BellSouth customers in their marketing efforts and campaigns. However, BellSouth has constructed the Tariff in such a way that its existing customers are shielded from resellers of basic business local service as these customers are not eligible for the special rates offered therein. BellSouth's competitors therefore do not have the capability to resell these special rates for basic business local service to most of their potential customers. Thus, there legitimately arises the issue of whether such restrictions on resale are unreasonable and anti-competitive in violation of 47 U.S.C. § 251(c)(4)(B) and state law.

Inflation of Customer Acquisition Costs

The Tariff discriminates against BellSouth's competitors because operation of the Tariff artificially inflates the customer acquisition costs of competing carriers. Every carrier must expend marketing and installation costs on the front end to secure a customer's business. At this stage in the development of competition, competing carriers still focus their marketing efforts on BellSouth's customers because, as the incumbent, BellSouth is the dominant provider of service. Once a competing carrier is successful in winning one of BellSouth's customers, BellSouth will attempt to recapture its former customer by offering a special deal through the Tariff. BellSouth therefore is in the position of having to attract the customer once. On the other hand, to serve the same customer BellSouth's competitors must attract the customer twice — once to initially win the customer from


BellSouth, and again to re-attract the customer a second time in response to BellSouth's Tariff. Questions therefore arise as to whether this artificial inflation of the competing carriers' customer acquisition costs place BellSouth's competitors at an unfair disadvantage in violation of laws prohibiting anti-competitive behavior.

In summary, many anti-competitive concerns exist because there is a number of situations that arise through the application of the Tariff where BellSouth can exploit its role as the wholesale supplier of basic business local service, and its favorable market position and power, to gain advantages over its competitors. Moreover, BellSouth has an economic incentive to engage in such conduct. Accordingly, one should consider the anti-competitive dimensions of the Tariff, and their impact on BellSouth's competitors. For these reasons, there arises the legitimate and meritorious issue of whether operation of the Tariff is anti-competitive in violation of the law.

CONCLUSION

Based on the foregoing, the Attorney General submits that serious legal and regulatory issues have been raised relative to the operation of BellSouth's Tariff and Revised Tariff. The Attorney General therefore respectfully requests that the TRA convene a contested case proceeding to evaluate the issues raised herein.

RESPECTFULLY SUBMITTED,

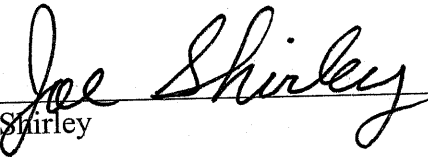

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Nashville, Tennessee 37202
(615) 532-2590

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum in Support of Convening a Contested Case Proceeding was served on parties below via facsimile and U.S. Mail, postage prepaid, on the 11th day of February, 2003.

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